

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

(1) VAN ETHRIDGE

Plaintiff,

vs.

Civil Action No. CIV-11-1350-L

(2) PRIME CONDUIT, a foreign
corporation doing business in the State of
Oklahoma,

Defendant,

**DEFENDANT'S APPLICATION FOR LEAVE TO SUPPLEMENT
RESPONSE**

Pursuant to LCvR5.2.1(l), Prime Conduit asks this Court for leave to supplement its Response to Plaintiff's Motion for Remand.

Prime Conduit filed its Response to Plaintiff Motion to Remand on December 28, 2011. Docket No. 8. At that time, Prime Conduit believed that Ethridge had not elected to participate in continuing COBRA coverage under the Anthem Policy as offered by Prime Conduit upon the termination of his health coverage. That is not the case. The records reflect that Ethridge is currently and was at the time of filing this action participating in continuing COBRA coverage under the Anthem Policy.

Ethridge's status as an ERISA participant is a key issue in this Court's determination of whether it has federal subject matter jurisdiction of this matter. Prime Conduit maintains that whether or not Ethridge had

COBRA coverage at the time he filed suit, Ethridge had ERISA standing such that his claims were subject to removal. But given that Ethridge was covered by an ERISA plan at the time he filed suit, then unquestionably ERISA pre-empts Ethridge's state law claims. As such, Prime Conduit requests leave to supplement its response to Ethridge's Motion to Remand by attached necessary documents and affidavits and revising its brief accordingly.

Prime Conduit's counsel has made several attempts to contact counsel for Ethridge to inquire whether or not she objects to this application. They have not yet made contact and this inquiry has not been made.

RELIEF REQUESTED

1. Prime Conduit be granted leave until January 9, 2012 to supplement its Response to Motion to Remand to correct the factual record alleged in it and to revise the argument regarding Plaintiff's reliance on *Hansen v. Harper Excavating, Inc.* 641 F.3d 1216 (10th Cir. 2011)

WHEREFORE, the Plaintiff prays that the Court grant its Application for Leave until January 9, 2012 to amend and supplement its Response to Motion to Remand to correct the factual record alleged in it and to revise the argument contained therein.

Respectfully Submitted,

/s/ T. Matthew Smith

Richard C. Ogden (OBA #13749)

T. Matthew Smith (OBA # 20848)

MULINIX OGDEN HALL & LUDLAM

PLLC

A Professional Limited Liability Company

3030 Oklahoma Tower

210 Park Avenue

Oklahoma City, Oklahoma 73102

(405) 232-3800 - Telephone

(405) 232-8999 - Facsimile

Attorneys for Prime Conduit

CERTIFICATE OF MAILING

This is to certify that on this 3rd day of January 2012, a true and correct copy of the above and foregoing was electronically filed to the Court Clerk using the ECF System for filing and mailed, postage prepaid, to the following named counsel of record, to wit:

Jacque Pearsall

JACQUE, PEARSALL, PLLC

6303 North Portland, Suite 300

Oklahoma City, OK 73112

Attorney for Plaintiff

/s/ T. Matthew Smith

T. Matthew Smith